



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Afghan Carpet Services, Inc.

File: B-230638

Date: June 24, 1988

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### DIGEST

1. A protester, which is a potential competitor if the protest is successful, is an "interested party" although no bid was submitted under the protested solicitation.
2. A contracting officer's decision to procure carpet on an unrestricted basis, rather than through a small business set-aside, is not an abuse of discretion where the activity had no experience with any carpeting firms (large or small) experienced in delivery of such a large quantity in the time required, and the contracting officer rationally concluded that there was no reasonable expectation that offers would be received from two or more responsible small businesses.

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### DECISION

Afghan Carpet Services, Inc., protests the failure of the General Services Administration (GSA), to set-aside for small business a procurement for a definite quantity of tufted carpet under request for proposals (RFP) No. FCNH-FW-2128-N-3-10-88.

We deny the protest.

The solicitation, issued February 10, 1988, is for 39,500 square yards of carpet. GSA currently has a Federal Supply Schedule (FSS) contract for this item, but these quantities exceed the maximum order limitation.

A synopsis of the procurement was published in the Commerce Business Daily, on December 29, 1987. Of the 19 firms which requested solicitations, only 2 firms submitted offers. One of these was a large business and the other was a small business. At the March 10, 1988, closing date the agency received 11 proposals, 8 of which were from small businesses.

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Afghan, which did not submit an offer, contends that there are at least six small business suppliers other than itself that can meet GSA's requirements under the solicitation and concludes that the solicitation therefore should have been issued as a small business set-aside. The agency responds generally that it did not have sufficient information concerning the procurement of such a large amount of this type of carpet upon which to base a set-aside determination. We think that the agency acted reasonably.

Initially, GSA urges that we dismiss the protest because Afghan did not submit an offer and therefore is not an interested party entitled to protest. GSA further notes that the protester has not submitted any recent offers for similar procurements.

The Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551 (Supp. III 1985), defines an interested party as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or the failure to award the contract." Under CICA and our Bid Protest Regulations a party must be interested in order to have its protest considered by our Office. 4 C.F.R. § 21.0(a) (1988). Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. Deere and Co., B-212203, Oct. 12, 1983, 83-2 CPD ¶ 456. Where, as here, a protest involves a solicitation which is allegedly defective because it was not set-aside for small business, a protester's interest as a potential competitor under a revised set-aside solicitation if the protest is sustained is sufficient for it to be considered an interested party even if the protester has chosen not to compete under the allegedly defective solicitation. Swan Industries, B-217199, et al., Mar. 25, 1985, 85-1 CPD ¶ 346. In fact, we do not think that it would be unusual for a small business not to compete against large businesses under an unrestricted solicitation but participate under one set-aside for small businesses. Further, under these circumstances we do not believe that it is significant that the protester has not previously participated in a GSA carpet procurement.

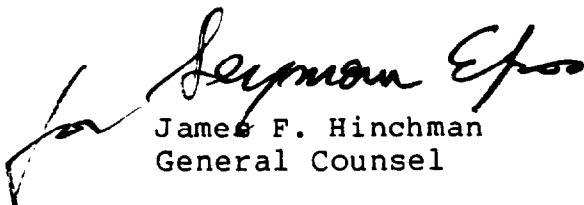
As a general rule, the decision whether to set-aside a particular procurement is within the discretion of the contracting officer. International Technology Corp., B-222792, June 11, 1986, 86-1 CPD ¶ 544. Except in situations not applicable here, under Federal Acquisition Regulation (FAR) § 19.502-2 the decision to set-aside a procurement is to be based on whether there is a reasonable expectation of receiving proposals from at least two responsible small business concerns and that an award can be

made at a reasonable price. That determination basically involves a business judgment within the broad discretion of contracting officials, and our review, generally, is limited to ascertaining whether those officials have abused that discretion. T-L-C Systems, B-225496, Mar. 27, 1987, 87-1 CPD ¶ 354. In this regard, we have upheld the contracting officer's determination where it is based upon such factors as prior procurement history, market surveys and/or advice from the agency's small business specialists and technical personnel. Litton Electron Devices, B-225012, Feb. 13, 1987, 66 Comp. Gen. \_\_\_, 87-1 CPD ¶ 164. Finally, in reviewing the propriety of the initial decision concerning whether or not to set a procurement aside the number of small business offerors responding to the solicitation is not relevant. Hopkinsville Aggregate Co., B-227830, June 16, 1987, 87-1 CPD ¶ 600.

In this instance, GSA has had no recent experience with purchases of this magnitude of tufted carpet with such a short delivery time. For example, the most recent procurement for the carpet in question, an FSS contract, lists estimated yearly requirements of 6,500 yards with a delivery time of 75 days, whereas under the protested solicitation delivery is due in 30 days after first article approval and the quantity of carpet is more than six times greater than the estimated yearly quantity in the FSS contract. Further, the record shows that agency technical personnel advised the contracting officer that a complex and potentially lengthy process was necessary to manufacture this type of carpet. Finally, the contracting officer conferred with the small business representative, who concurred in the decision not to set-aside the procurement.

While the protester contends that several capable small business firms exist that could meet the solicitation requirements and in fact several offers were received from small business firms, at the time the decision was made to issue the solicitation on an unrestricted basis it was reasonable. Thus, we have no basis upon which to object to the agency's decision. T-L-C Systems, B-225496, supra.

The protest is denied.

  
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General Counsel